

Message Text

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ACTION L-02

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E.O. 11652: N/A

TAGS: CPRS, PFOR, FR

SUBJECT: HOLDER-KERKOW EXTRADITION

REF: PARIS 14596

PARIS 14661

1. FOLLOWING DISCUSSIONS HERE WITH DEPUTY LEGAL ADVISOR FELDMAN WHICH CLARIFIED PURPOSE OF PROPOSED NOTE, WE BELIEVE LESS EXTENSIVE REVISION OF DEPARTMENT'S DRAFT IS REQUIRED THAN PROPOSED REFTELS. AS WE NOW UNDERSTAND IT, DEPARTMENT'S PURPOSE IS TO PLACE ON RECORD, WITH A VIEW TO POSSIBLE PUBLICATION, USG POSITION ON LEGAL POINTS AT ISSUE, RATHER THAN TO SEEK TO CHANGE FRENCH POSITION. BECAUSE OF THE IMPORTANCE OF THIS CASE AS A PRECEDENT, WE AGREE THAT A PROTEST ON THE RECORD IS PROBABLY WORTH THE COST OF ANY FALL-OUT IT MAY PRODUCE AFFECTING OUR OTHER EXTRADITION CASES HERE.

2. A PROPOSED REVISION OF THE DEPARTMENT'S DRAFT FOLLOWS BY SEPTTEL. ASIDE FROM MINOR STYLISTIC CHANGES, THE FOLLOWING CHANGES ARE SUGGESTED (KEYED TO LETTERED PARAGRAPHS IN SEPTTEL):

PARA. A - INSERTS PHRASE "IN THE EVENT THE ACCUSED ARE FOUND GUILTY" TO AVOID APPEARANCE OF PREJUDGEMENT.

PARA. D - REDRAFTED TO CONCENTRATE ON THE ISSUE OF FRANCE'S RESPONSIBILITY UNDER THE EXTRADITION CONVENTION. QUESTION OF DETERRENCE OF HIJACKING IS

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DROPPED TO PARA. H TO AVOID INTERRUPTING THE DEVELOP-

MENT OF DEPARTMENT'S ARGUMENT ON THE MAJOR ISSUE.

ALSO, WE SUGGEST DEPARTMENT CONSIDER REDRAFTING
PENULTIMATE SENTENCE OF THIS PARAGRAPH, AS EVERYONE
HERE FINDS LANGUAGE CONFUSING.

PARA. G - REDRAFTED TO MAKE EXPLICIT REASONS FOR
CITING US/CUBA MEMORANDUM.

PARA. I - REDRAFTED TO AVOID THE OFFENSIVE SUGGESTION
THAT THE FOREIGN MINISTRY SHOULD SOMEHOW BE ABLE TO
CONTROL THE COURTS SO AS TO PREVENT A REPETITION OF
THE HOLDER-KERKOW DECISION. THIS DECISION MAY NOT
HAVE FOLLOWED THE BEST PRECEDENTS IN INTERNATIONAL
JURISPRUDENCE, BUT IT WAS FULLY IN ACCORD WITH FRENCH
TRADITIONS ON POLITICAL ASYLUM AND WITH RECENT PRE-
CEDENTS IN EXTRADITION CASES. FOR TACTICAL REASONS,
WE BELIEVE IT WOULD BE BETTER TO DROP FROM THE NOTE
THE MENTION OF PROCEDURAL PROBLEMS AFFECTING THE
EXTRADITION CONVENTION. WE CONCUR FULLY IN THE NEED
FOR DISCUSSIONS ON THE ISSUE OF RECIPROCITY UNDER
ARTICLE VI, BUT IN OUR OPINION IT WOULD BE BETTER TO
EXPLORE THIS PROBLEM INFORMALLY AT FIRST, RATHER THAN
TIEING IT INTO A STRONG PROTEST NOTE ON THE
SUBSTANTIVE LEGAL ISSUES.
RUSH

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